



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 19 2006

HAND DELIVERED

Donald F. McGahn II, Esq.
McGahn & Associates, PLLC
509 Seventh Street, NW
Washington, DC 20004

RE: MUR 5724
Feldkamp

Dear Mr McGahn:

On April 3, 2006, the Federal Election Commission notified your clients, James Lee Feldkamp and Jim Feldkamp for Congress, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information provided by you and information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, on December 14, 2006 found that there is reason to believe your client, James Lee Feldkamp, violated 2 U.S.C. §§ 441a(f) and 441b(a), provisions of the Act. The Commission also found that there is reason to believe your client, Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(b). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kate Belinski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "MET", is written above the printed name.

Michael E. Toner
Chairman

Enclosures

Factual and Legal Analysis

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RESPONDENTS: James L. Feldkamp MUR: 5724
Jim Feldkamp for Congress and
Patricia Siegmund, in her official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Neel Pender, Executive Director of the Democratic Party of Oregon. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Feldkamp had insufficient personal funds to finance three loans totaling \$77,500 that he purportedly made to his campaign in September and October 2004. For the reasons set forth below, there is reason to believe that James L. Feldkamp violated 2 U.S.C. §§ 441a(f) and 441b(a) by accepting excessive and/or prohibited contributions; and that Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) by accepting excessive and/or prohibited contributions and violated 2 U.S.C. § 434(b) by inaccurately reporting the source of the loans in question as Feldkamp's "personal funds."

II. FACTUAL BACKGROUND

James L. Feldkamp was the 2004 Republican nominee for Congress in Oregon's 4th Congressional District, and Jim Feldkamp for Congress was his principal campaign committee ("the Committee"). The Committee reported receiving a loan of \$30,000 from Feldkamp on

September 30, 2004.¹ The Committee's disclosure reports show another \$30,000 loan from Feldkamp to his campaign on October 6, 2004, followed by a \$17,500 loan on October 26, 2004. All three loans, totaling \$77,500, were reported as coming from Feldkamp's personal funds. *See* 2004 October Quarterly Report (amended); 2004 Pre-General Report (amended); 2004 Post-General Report (amended).

Feldkamp lost the 2004 election, and in September 2005, he announced his 2006 candidacy for the same Congressional seat. Shortly thereafter, he filed a Financial Disclosure Statement with the U.S. House of Representatives. He then informed the Commission that he was forgiving his previous loans totaling \$77,500 from the 2004 election cycle. *See* Letter from Feldkamp to FEC (September 30, 2005).

Feldkamp's Financial Disclosure Statement, dated September 28, 2005, reveals non-liquid assets in the form of publicly traded stocks, real property, private interests in two family businesses and a thrift savings plan. According to Feldkamp, these assets are reportedly worth somewhere between \$1,140,000 and \$5,400,050. *See* Feldkamp Response at 2 (May 10, 2006). The unearned income he received from these assets in 2004 was reported as less than \$10,000. Feldkamp reported no liquid assets, no salary for 2004, and a salary of \$30,730 for 2005.² *Id.*

¹ This \$30,000 loan was made two weeks after the Committee had informed the FEC that it was refunding an excessive contribution of \$34,780 from Feldkamp's mother, which the Committee claims was accepted "in error under the advisement of a former campaign consultant." *See* Feldkamp Committee, FEC Miscellaneous Form 99, filed Sept. 16, 2004. At the time the candidate's mother, Phyllis Feldkamp, made the loan to the Committee, she had already contributed \$2,000 to Feldkamp's primary campaign and \$2,000 to his general election campaign.

² The Financial Disclosure Statement for Candidates, Schedule B, requires that candidates include income and asset information for the year of filing as well as the preceding year.

Furthermore, the Financial Disclosure Statement does not disclose any savings accounts, trusts, or other liquid asset accounts.³

In his unsworn response to the complaint, Feldkamp asserts that he had sufficient personal funds to make the loans in 2004 through his substantial non-liquid assets, income from various sources, and history of receiving monetary gifts from his mother. He stated that he "has drawn a salary from a variety of jobs" such as the FBI and U.S. Naval Reserves, but did not indicate when he received these salaries or the amounts he received. Feldkamp further stated that he has regularly received monetary gifts from his mother, Phyllis Feldkamp, "for events such as his birthday or Valentine's Day, or larger so-called lifetime gifts" over the past 15 years.⁴

Because Feldkamp only generally asserted that the loans were financed with his "personal funds," but provided no specific information regarding the exact source of the funds, and it is not readily apparent that the potential sources to which he cites were adequate to fund the loans, we provided Feldkamp with an opportunity to clarify the exact source of the funds used to make the loans. In his unsworn response to our letter seeking clarification, Feldkamp merely stated that the source of the funds was his "own bank account," but provided no further information or supporting documentation.

³ The Financial Disclosure Statement requires filers to disclose all interest-bearing, cash-deposit accounts at banks, credit unions and savings and loan associations, including interest-bearing checking accounts, passbook and other savings accounts, money market accounts, NOW accounts, certificates of deposit, and IRAs held in the form of savings accounts or CDs, if their total value exceeds \$5,000 as of the end of the reporting period or if any individual account exceeds \$1,000 as of the end of the reporting period. Filers are also required to disclose any income from or beneficial interest in principal or income in any trusts that have a fair market value of more than \$1,000 at the end of the reporting period.

⁴ In his response to the complaint, Feldkamp included a list of gifts that he received from his mother since 1990. The list reflects that since 1998, Feldkamp received an average of \$11,000 per year from his mother.

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III. LEGAL ANALYSIS

The key issue in this matter is whether the funds that Feldkamp loaned to his campaign were his personal funds. Congressional candidates may make unlimited campaign expenditures from personal funds.⁵ See 11 C.F.R. § 110.10. However, if the funds for the loan were not Feldkamp's personal funds, Feldkamp and the Committee may be liable for accepting excessive or prohibited contributions, and the Committee may also be liable for misreporting them.⁶ See 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 441b(a), and 434(b).

The loan funds may not have come from Feldkamp's salary or non-liquid assets. Feldkamp's response to the complaint and his Financial Disclosure Statement indicate that his assets are comprised of non-liquid stocks, real estate holdings and a thrift savings plan. Feldkamp reported the combined income from these assets as between \$5,000 to \$10,000 per year for 2004 and 2005, and none of the available information suggests that Feldkamp liquidated any of these assets in order to make the loans. Furthermore, Feldkamp disclosed on his Financial Disclosure Statement that he had no salary in 2004 and a salary of \$30,730 for 2005.⁷

When presented with an opportunity to clarify the source of the funds, Feldkamp did not elaborate, stating only that the funds came from his "own bank account." He offered no further

⁵ "Personal funds" include all assets in which a candidate has legal title or an equitable interest, as well as salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; and proceeds from lotteries and similar legal games of chance. See 2 U.S.C. § 431(26); 11 C.F.R. § 100.33.

⁶ Any candidate who receives a contribution in connection with his or her campaign shall be considered as having received such contribution as an agent of his or her authorized committee. 2 U.S.C. § 432(c)(2).

⁷ The Financial Disclosure Statements do not list any salary income from the FBI or the National Guard for any year.

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details or documentation as to whether the funds in that bank account were his personal funds as defined in 11 C.F.R. § 100.33. Furthermore, Feldkamp failed to disclose the existence of any bank accounts on his Financial Disclosure Statement, and we have no further information at this time upon which to evaluate his assertion that the \$77,500 came from his bank account or that the account contained his personal funds.

It appears that Feldkamp may not have had sufficient income to make the loans to his campaign, and his response did not indicate that he liquidated any assets in order to fund the loan. Furthermore, Feldkamp's claims regarding the source of the funds are not supported by the information contained in his response to the complaint, his response to our letter seeking clarification, or the Financial Disclosure Statements he filed with the U.S. House of Representatives.

Therefore, there is reason to believe that James L. Feldkamp, and Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a) by knowingly accepting prohibited or excessive funds. In addition, because the Committee may have incorrectly characterized the loan amounts as the "personal funds" of James Feldkamp on the Committee's disclosure reports, there is reason to believe that Jim Feldkamp for Congress and Patricia Siegmund, in her official capacity as treasurer, violated 2 U.S.C. § 434(b).